

SAMPLE ANSWER TO FINAL EXAM

MULTIPLE CHOICE

1. (a) is incorrect. Reliance upon a friend's legal advice is not a defense.
(b) is incorrect. The defense of duress does not require that one contact law enforcement
(c) is incorrect. This is a mistake of law, and a reasonable (but erroneous) belief about the interpretation of the law is no defense.
(d) **is correct.** Billy might have gone before a different jury.
2. (a) **is correct.** Ward and June were under a legal duty to protect their child, and their failure to seek medical care resulted in their knowingly causing serious bodily injury
(b) is incorrect. Because they were his parents, they were under a legal duty of care.
(c) is incorrect. Their failure to seek care caused his injury, and they had a duty to engage in positive action.
(d) is incorrect; there is no reason they could not both be convicted.
3. (a) is incorrect; Morris' original suggestion was not with the purpose of having Ron commit theft.
(b) is incorrect; Morris has not taken a substantial step
(c) is incorrect, since both answers are incorrect.
(d) **is therefore correct.**
4. (a) is incorrect; the MPC permits unilateral conspiracy
(b) **is correct;** in order to conspire, one must agree; and here by hypothesis Ron does not believe he is agreeing
(c) is therefore incorrect, since (a) is incorrect;
(d) is incorrect, since (b) is correct
5. (a) is incorrect, since it is not necessary that Ron -- but only one of the conspirators -- commit an act in furtherance of the conspiracy.
(b) is incorrect, since a conspiracy to commit third degree felony requires an overt act.
(c) is therefore incorrect
(d) **is therefore correct.**
6. (a) **is the best answer,** because it is the worst argument. First, it may be that D was not deterred by prior incarceration because it wasn't long enough. Second, even if D is undeterrable, others likely would be.
(b) is incorrect, because the argument is decent: D's background might mitigate his culpability;
(c) is incorrect; this is a decent argument, since criminal activity decreases with age
(d) is incorrect; the argument is partially true, although it might be offset by other considerations.
7. (a) **is correct,** since a reasonable fear of imminent serious bodily harm will justify even deadly force
(b) is incorrect, since the MPC permits "imperfect justification"
(c) is incorrect; the term "excused" is wrong -- one is either justified, or not -- and her belief that her life was threatened, if unreasonable, would lead to punishment for negligent homicide
(d) is incorrect; again, the term "excuse" is misplaced, and she is not obligated to retreat with complete safety unless she knows she can retreat with complete safety.

8. (a) is incorrect; accomplice liability requires aiding the principal with the *purpose* of facilitating the commission of the crime. Mere knowledge is not enough.
(b) is incorrect; this statement contains only recklessness, which is still lower in culpability;
(c) is therefore incorrect; and
(d) **is therefore correct.**
9. (a) is incorrect; it would suffice for attempted murder, but not murder; murder requires causation.
(b) is incorrect; in addition to being a but-for cause, the relationship has to be one that is not too indirect, and arguably there is no causal relation between hurrying to get ice cream and being electrocuted;
(c) is incorrect; Maude's role does not necessarily break the chain of causation
(d) **is therefore correct.**
10. (a) is not correct; there must be force or threat; Martha's fear is not enough to establish that;
(b) **is correct**; George would be at least reckless with respect to her being unconscious, and that is sufficient to establish liability;
(c) is incorrect; below the age of 10 it is rape
(d) is therefore incorrect
(e) is therefore incorrect
11. (a) is incorrect; so long as Huey is negligent with respect to the result (death), he may be an accomplice in the crime of negligent homicide;
(b) is incorrect; this states the *Pinkerton* rule, which is rejected by the MPC
(c) **is correct**, because the MPC "merges" conspiracy with the crime itself.
(d) is therefore incorrect; and
(e) is therefore incorrect.

ESSAY QUESTIONS

Question 1

[The quotation is from Anne Coughlin, *Excusing Women*, 1994, text at 774] The battered woman syndrome defense is used to avoid conviction for violence committed by women against men (or women) who have previously caused harm to the defendant, and from whom the defendant may fear future violent attack. Ordinarily, a defendant is not justified in using deadly force unless the defendant has reason to fear an imminent deadly assault. Typically in a battered woman syndrome case, the defendant tolerates abuse over a long period of time and then one day "snaps" and inflicts deadly force upon her abuser, even though the abuser at the time posed no immediate threat.

Viewed in a positive light, the defense is necessary to counteract a tendency for a jury, not aware of the context, to find that the defendant was unjustified in thinking that she needed to use deadly force. By showing that the defendant suffered from "battered woman syndrome," the defendant hopes that the jury will come to believe that, while the abuser did not appear to pose an immediate threat to the defendant, the defendant's perception was that this was the only chance she had to escape the abuser's violence. By analogy, a defendant who has been kidnapped and confined may seize the opportunity of a lapse in vigilance to kill her kidnapper in order to escape. Continuing with the analogy, a defendant is justified in using deadly force even though, unbeknownst to her, she had an escape route that would not have required her to use deadly force.

The more negative view of the battered woman syndrome defense is that it fails to recognize the importance of personal responsibility in criminal enforcement. Virtually every person is subject to pressures and temptations, and if "to know all is to forgive all," then virtually no one would be

held criminally accountable. The pressures and temptations that women succumb to in an abusive relationship are not that much different from what other people have to cope with.

In fact, virtually every court will permit some form of expert testimony regarding the battered woman syndrome; it is left to the jury to evaluate whether or not a defendant should be held responsible in a given criminal case.

The quotation reflects a divide among those who describe themselves as feminists; some would say that use of the defense benefits women because it highlights the abuse they suffer at the hands of men (and occasionally other women). On the other hand, the author of the quotation would be among those who say that the defense hurts women by failing to hold them to the same standard as men.

Another problem stems from whether or not the defense should be limited to a complete vindication of the defendant, or whether an "imperfect defense" based upon partial acceptance of the defense can reduce the defendant's culpability from murder to, say, manslaughter (reckless homicide) or negligent homicide. Some courts (particularly those following the Model Penal Code) would permit the "imperfect defense," but others would say that the defendant who fails to convince the jury that her conduct was truly justified should find the defendant guilty as charged.

Also, some courts have permitted the use of parallel kinds of "victim syndromes" (e.g., Holocaust syndrome, battered child syndrome, etc.).

Question 2

The facts for this question were based upon *State v. Joseph*, 214 W.Va. 525, 590 S.E.2d 718 (2003), which reversed the defendant's conviction for first degree murder based upon the failure to instruct the jury on diminished capacity.

The question asks for an analysis of a charge of first degree murder. This answer will first evaluate whether the evidence would support a finding of murder under MPC § 210.2(1)(a)), and then evaluate potential defenses that Joseph could raise.

Voluntary Act Requirement. Before we even get to the description of first degree murder, we must determine whether Joseph committed a voluntary act. No criminal liability may be imposed unless the defendant's conduct *includes* a voluntary act. MPC § 2.01(1). A voluntary act does not include "(a) a reflex or convulsion; (b) a bodily movement during unconsciousness or sleep; (c) conduct during hypnosis or resulting from hypnotic suggestion; or (d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual." MPC § 2.01(2).

It seems unlikely that Joseph could argue (a) would apply; although one could say that he acted "reflexively" in firing the gun at Light, it is not a reflex in the sense that one's knee pops up when the leg is hit at the right spot with a reflex hammer. On the other hand, Joseph could argue that (b) would apply — that he was acting in an unconscious state when he saw a "blue flash," grabbed the gun and started firing. There are cases (like *Newton*) where the defendant successfully argued that the jury should be instructed on unconscious behavior. In *Newton* the defendant had suffered a gunshot wound to the abdomen and the defense expert was prepared to testify concerning the similarity between behavior following such a wound and somnambulism. The trial court erroneously excluded that testimony. Here a defense expert might testify that the head wounds that Joseph suffered in his motorcycle accident rendered Joseph susceptible to a kind of unconsciousness.

On the other hand, we could certainly point to evidence that could only be explained by conscious behavior. It seems unlikely that a jury would find that Joseph did not act voluntarily, but on the other hand, our standard is proof beyond a reasonable doubt.

Definition of 1st^o murder. which requires that the defendant commit a homicide "purposely or knowingly." "Purposely" is defined as including "intentionally" or "with design." MPC § 1.13(11)-(12). There doesn't seem to be much doubt that Joseph fired the .22 caliber pistol at Light with the intention of causing his death. There may be some overlap here with the issues about the voluntariness of Joseph's behavior. If Joseph claims that he was simply firing randomly in an instinctive effort to protect himself and that he only accidentally wound up shooting Light, that would become an issue for the jury, but it seems quite obvious that Joseph was indeed acting with the intent of causing Light's death.

Exception for Extreme Mental or Emotional Disturbance. There is an exception within MPC § 210.2 for homicides that would otherwise be murder, but are committed "under the influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse." MPC § 210.3(1)(b). Joseph might argue that he was under such disturbance at the time he killed Light, but there is nothing extreme about the events of the evening.

Cause of Death. There would be some question about whether the act of Joseph in firing the .22 caliber pistol at Light actually caused his death. The facts say that the five shots "mortally wounded" Light. We would need expert testimony from the coroner or someone else who could testify that Light was already dead before Joseph backed over him. If, instead, Light could have survived the gunshot wounds if he had not been run over by the car, then the defense might argue that Light was killed by the car rather than by the gunshot wounds. Although Joseph is responsible for both actions, his action in shooting Light was purposeful, whereas he may have simply been reckless or negligent in running over him. The MPC requires a causal relationship that includes both "but-for" causation (MPC § 2.03(1)(a)) and a form of "legal cause." With respect to deaths that are caused purposely, the MPC requires only that the actual result involve "the same kind of injury or harm as that designed or contemplated and is not too remote or accidental in its occurrence to have a [just] bearing on the actor's liability or on the gravity of his offense." MPC § 2.03(2)(b). If in fact Joseph intended to kill Light, but it was actually the vehicle collision that was the immediate cause of his death, I believe that Joseph would still be found to have caused his death.

Self-Defense. Joseph might argue that, even though he intentionally killed Light, his conduct was at least partially justified as self-defense. Under MPC § 3.04 deadly force is only justified where the actor believes that such force is *immediately necessary* for protection of the defendant from death or serious bodily harm. Joseph was struck or slapped on the left side of the head, but there is nothing in the facts to suggest that Joseph believed that Light's conduct made the use of deadly force immediately necessary. Joseph was in Light's driveway, and Light was the aggressor. In addition, even if Joseph did in fact fear that deadly force was about to be used against him (whether that belief was reasonable or not), he was still under an obligation to retreat so long as he knew he could avoid the deadly force by doing so. Since Joseph was in his car he could have retreated in his car.

Joseph might argue that, even if he in fact should have retreated, or in fact should have recognized that he could retreat with complete safety, he was so confused at the time that he was unaware of the ability to retreat and mistakenly thought that deadly force was his only option. Under the MPC, this would be a defense. It seems unlikely that the jury would believe that this was the case, but legally the retreat obligation is imposed only upon those who actually know that they can do so with complete safety.

Intoxication. The facts state that Joseph had been drinking beer and had smoked marijuana earlier in the evening, and was under the influence of a variety of prescription drugs. Under the MPC, voluntary intoxication does not provide a defense for crimes that require only recklessness or negligence, but here the crime charged requires purpose or knowledge. If, as a result of his intoxication, Joseph was unable to form the purpose of causing death, he would not be guilty of 1st^o murder, even though he lost that ability as a result of voluntary intoxication. On the other hand, the facts demonstrate that he was quite capable of purposeful action, including driving to his parents' home, calling 911, etc. Thus, it seems unlikely that he was so intoxicated that he lost the ability to form the purpose of causing death. Whether in fact he had such a purpose (or instead was responding unconsciously, as noted above) would be a question of fact for the jury.

Mental Disease or defect ("insanity"). Under the MPC, it is a defense that the defendant, as a result of mental disease or defect, lacked substantial capacity either (1) to appreciate the wrongfulness of his conduct or (2) to conform his conduct to the requirements of law. In this case Joseph appears to have some kind of mental disease or defect. His motorcycle accident apparently resulted in a serious head injury. It could cause him various kinds of mental problems. However, in order to be a defense, it must result in Joseph lacking substantial capacity in one of two ways. The first form of incapacity is to *appreciate* the wrongfulness of his conduct. Joseph may have mistaken the nature of the reality around (a so-called cognitive defect) or it may be that he had a distorted view of right and wrong (he thought he was doing the right thing by killing somebody). The facts only describe a sequence in which he saw a "blue flash" and then reached for a gun and started firing. The defense may say that this was a kind of unconscious response -- again, similar to the argument described above regarding whether it was a voluntary act. On the other hand, if he simply saw a blue flash, but afterward acted with normal mental functioning (which appears to be the case, given his subsequent rational behavior) then it will be difficult for the defense to claim that his conduct was the result of a lack of substantial capacity to appreciate the wrongfulness of his conduct.

The second prong of the MPC test is the so-called control prong. It is a defense of the defendant, because of a mental disease or defect, can't control their behavior. This prong might have some application here, since Joseph responded almost instinctively to the "blue flash."

Diminished Capacity. Aside from a mental disease or defect, Joseph might argue that he suffered from "diminished capacity." The MPC is not as clear about how to incorporate evidence of diminished capacity into the determination of guilt, but many authorities say that, according to the MPC, evidence of diminished capacity is admissible to determine whether the defendant had the requisite mens rea. Joseph might argue that an accumulation of factors (earlier head injury, ingestion of intoxicating substances, and perhaps other factors) resulted in Joseph losing the ability to form a real intent to kill. The evidence suggests he was fully capable just moments before and just moments afterward, but he might claim otherwise.

Overall, I would say that the prosecution's case is strong, but the jury will have to find that Joseph knew what he was doing at the time he killed Light.

Question 3

The major differences between the MPC approach and other approaches would be (1) the treatment of self-defense; (2) intoxication; (3) insanity; and (4) diminished capacity.

1. *Self-defense.* Many jurisdictions permit the use of self-defense only when the defendant's belief in the necessity for self-defense is both honest and reasonable. Thus, if Joseph thought he was being attacked, but was not reasonable in so thinking, he would be denied the benefit of the defense. Other jurisdictions would not require Joseph to retreat, but I don't think it would help Joseph significantly in this case.

2. *Intoxication.* While most jurisdictions follow the MPC in permitting intoxication as a defense to crimes requiring purpose or knowledge, some do not.

3. *Mental Disease.* Many jurisdictions have moved to a more restrictive definition of mental disease than the one prescribed by the MPC. A common test is now the "M'Naghten" test, which permits the defense only when the defendant was incapable of distinguishing right from wrong. That would make the prosecution's case easier, because in this case Joseph after killing Light called the police and awaited them. In addition, many jurisdictions have rejected the "control" prong of MPC § 4.01.

4. *Diminished capacity.* Some jurisdictions have taken a more liberal view of diminished capacity, following the *Browner* case. If so, Joseph might use this defense to his advantage, succeeding despite his inability to show real mental disease or defect. On the other hand, most jurisdictions have explicitly rejected "diminished capacity," which would favor the prosecution.

Fall 2004 Criminal Law Checklist

QUESTION 1

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|---|--|
| <input type="checkbox"/> Overview | <input type="checkbox"/> Explain imperfect justification as defense |
| <input type="checkbox"/> Defendant's use of deadly force v. abuser | <input type="checkbox"/> MPC permits imperfect justification |
| <input type="checkbox"/> Typically a lack of imminence | <input type="checkbox"/> Others require that conduct be fully justified |
| <input type="checkbox"/> Why not use a non-deadly alternative? | <input type="checkbox"/> |
| <input type="checkbox"/> Requires expert testimony | <input type="checkbox"/> Contra: pressures, temptations not unique |
| <input type="checkbox"/> Most courts permit such expert testimony | <input type="checkbox"/> Some feminists back the defense |
| <input type="checkbox"/> | <input type="checkbox"/> Quotation reflects opposite point of view |
| <input type="checkbox"/> | <input type="checkbox"/> Parallel "syndromes" |
| <input type="checkbox"/> | <input type="checkbox"/> |

QUESTION 2

- | | |
|---|--|
| <input type="checkbox"/> Overview | <input type="checkbox"/> Self-Defense |
| <input type="checkbox"/> Was there a voluntary act | <input type="checkbox"/> Deadly force only if immediately necessary |
| <input type="checkbox"/> Involuntary acts listed in § 2.01(2)(a)-(d) | <input type="checkbox"/> Erroneous estimation would qualify |
| <input type="checkbox"/> Was J's act unconscious ? | <input type="checkbox"/> Requirement for retreat |
| <input type="checkbox"/> Not " reflexive " in classic sense | <input type="checkbox"/> |
| <input type="checkbox"/> Parallel with <i>Newton</i> | <input type="checkbox"/> Intoxication |
| <input type="checkbox"/> | <input type="checkbox"/> Evidence suggests some ° of intoxication |
| <input type="checkbox"/> Definition of 1st° murder | <input type="checkbox"/> Would qualify as defense under § 2.08(1) |
| <input type="checkbox"/> Purposely or knowingly | <input type="checkbox"/> But evidence also shows capacity |
| <input type="checkbox"/> Exception for extreme disturbance | <input type="checkbox"/> |
| <input type="checkbox"/> Evidence wouldn't support such a finding | <input type="checkbox"/> Mental Disease/defect per MPC § 4.01 |
| <input type="checkbox"/> | <input type="checkbox"/> Evidence supports finding |
| <input type="checkbox"/> Causation | <input type="checkbox"/> Cognitive prong doesn't help J |
| <input type="checkbox"/> But-for test is satisfied ("mortal" wounds) | <input type="checkbox"/> Control prong might be relevant |
| <input type="checkbox"/> § 2.03(2)(b) also satisfied | <input type="checkbox"/> perhaps an inability to control |
| <input type="checkbox"/> | <input type="checkbox"/> Diminished capacity as separate defense |
| <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> | <input type="checkbox"/> |

QUESTION 3

- | | |
|--|--|
| <input type="checkbox"/> Self-defense | <input type="checkbox"/> Mental Disease |
| <input type="checkbox"/> Imperfect self-defense? | <input type="checkbox"/> Reversion to M'Naghten |
| <input type="checkbox"/> Less restrictive retreat rule? | <input type="checkbox"/> Abandonment of control prong |
| <input type="checkbox"/> | <input type="checkbox"/> Diminished capacity embraced? |
| <input type="checkbox"/> Intoxication | <input type="checkbox"/> Diminished capacity rejected ? |
| <input type="checkbox"/> Rejection even for crimes req. purpose | <input type="checkbox"/> |
| <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> | <input type="checkbox"/> |

Exam # _____